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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,912	01/03/2001	Martin Lakes	3380/371	2564
757	7590	04/13/2004	EXAMINER	
GENERAL NUMBER 00757 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60611			DEPUMPO, DANIEL G	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/753,912

Applicant(s)

LAKES, MARTIN

Examiner

Daniel G. DePumpo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 6-8, 15-17, 23-25 and 30-32 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-14 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 9, 18, 19, 21, 22 and 26-28 is/are rejected.
- 7) ☒ Claim(s) 3, 20 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. Claims 6-8, 15-17, 23-25 and 30-32 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 18 and 19 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Triplett (as cited by applicant).

Triplett discloses a crawler vehicle having the structure substantially as claimed. The vehicle includes identical crawler assemblies (34, etc.) which are interchangeable (the paragraph spanning cols. 3 and 4). The drive assembly 18 is connected on an end of the crawler frame 35. Triplett teaches the use of two drive assemblies 18 on each crawler, rather than "only one drive assembly" as claimed. However, elimination of one of the redundant drive assemblies from each crawler would have been obvious since it has been held that the elimination of an element and its function is obvious.

4. Claims 1, 2, 4, 5, 9, 18, 19, 21, 22, 26, 27 and 28 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Porubcansky in view of Triplett.

Porubcansky teaches a crawler vehicle having the structure substantially as claimed. The vehicle includes hydraulic drive motors 92, a gear box 114, a drive shaft 106, and a rotatable upper works 14. Porubcansky does not disclose that the crawler assemblies are identical. However, Triplett discloses a track vehicle having identical crawler assemblies as disclosed at

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col. 4, lines 1-5. It would have been obvious to modify Porubcansky by using identical assemblies, as taught by Triplett so that the parts are interchangeable to minimize maintenance costs and parts inventory costs.

5. Claims 10-14 are allowed.

6. Claims 3, 20 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Applicant's arguments filed 2/9/04 have been fully considered but they are not persuasive.

Regarding Triplett, applicant urges that "there is no clear indication that the left-hand crawler assembly is interchangeable with the right-hand crawler assembly" (remarks, page 10). The examiner does not agree. As noted throughout the prosecution history of this application, in the paragraph spanning columns 3 and 4, Triplett expressly states that the crawler parts are "interchangeable". In analyzing the Triplett reference, applicant seems to be disregarding the normal meaning of words used in the English language. Moreover, applicant has failed to indicate any structure in Triplett that would prevent the crawler assemblies from being "interchangeable" (i.e. capable of being interchanged).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

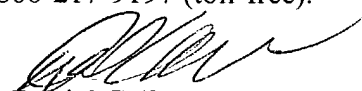
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel G. DePumpo whose telephone number is 703 308-1113. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703 308 1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Daniel G. DePumpo  
Primary Examiner  
Art Unit 3611

dgd  
4/6/04